IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LARRY ANDERSON	:	**CIVIL ACTION**
	:	
v.	:	
	:	
SUPERINTENDENT MARTIN L. DRAGOVICH, et al.	:	**NO. 98-1326**

MEMORANDUM ORDER

Plaintiff claims that defendants violated his Eighth and Fourteenth Amendment rights while he was an inmate at SCI Mahanoy. He alleges the following facts which the court assumes to be true.

Shortly before his transfer from SCI Graterford, plaintiff learned that his mother was seriously ill. Over a 23 day period he unsuccessfully made requests of defendants Giles and Wachs to make a telephone call to inquire about his mother. He acknowledges that inmates required a PIN number to access a telephone and he had not yet obtained one. He does not specify if or when he obtained a PIN number or if or when he was able to telephone his mother or other family members. Plaintiff also alleges that defendant Grow delayed the processing of administrative paperwork in connection with plaintiff's parole in retaliation for his participation in a civil action. He does not elaborate upon the nature of the "participation." Plaintiff acknowledges that his parole was contingent upon the submission of an acceptable "home plan." He does not allege when such a

plan was submitted and approved. Plaintiff was paroled shortly after his complaint was filed and his sentence has now expired.

Plaintiff claims that as a result of defendants' conduct, he endured "mental anguish" and "mental and physical suffering" for which he seeks "compensatory damages" and "punitive damages" of at least $10,000 from each defendant. Plaintiff also seeks a declaration that defendants' conduct was unconstitutional and an order enjoining them from retaliating against him.

Defendants have filed a motion to dismiss.

Defendants correctly note that there is no respondeat superior liability under § 1983 and thus absent a showing that Commissioner Horn and Superintendent Dragovich participated or knowingly acquiesced in any violation, they cannot be liable. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

Defendants correctly maintain that plaintiff's factual allegations do not show the type of extreme deprivation or deliberate indifference to a substantial risk of serious harm necessary to sustain an Eighth Amendment claim. See Farmer v. Brennan, 511 U.S. 825, 837 (1994); Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Griffin v. Vaughn, 112 F.3d 703, 709 (3d Cir. 1997).

Defendants correctly assert that an inmate's access to a telephone may constitutionally be conditioned on his obtaining

and using a PIN number. See Carter v. O'Sullivan, 924 F. Supp. 903, 909-10 (C.D. Ill. 1996). It does not follow, however, that prison authorities may deny or unduly delay telephone access by failing without justification to issue a PIN within a reasonable time. It can fairly be inferred from plaintiff's allegations that this may have occurred in his case.

In cases involving pretrial detainees, courts have found that unreasonable restrictions on telephone access violate First or Fourteenth Amendment associational rights. See Tucker v. Randall, 948 F.2d 388, 391 (7th Cir. 1991) (citing other cases). This would appear to be so with regard to convicted inmates as well, although the reasonableness of particular restrictions may turn on the status of an inmate. See Washington v. Reno, 35 F.3d 1093, 1100 (6th Cir. 1997) (accepting that reasonable telephone access is protected by First Amendment but finding constitutional 28 CFR § 545.11(d)(10) which limits inmates who do not participate in financial responsibility program to one telephone call per month); Carter, 924 F. Supp. at 909 ("inmates retain their First Amendment rights to communicate with family and friends including reasonable access to the telephone").[1]

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[1] But see Thorne v. Jones, 765 F.2d 1270, 1272-74 & n.6 (5th Cir. 1985) (questioning associational right of prisoners in visitation context and distinguishing between detainees and sentenced offenders regarding right to contact with family and friends).

Defendants correctly maintain that an inmate has no liberty interest in or constitutional right to parole prior to the expiration of his sentence, even where a parole date has been set. See Jago v. VanCuren 454 U.S. 14, 20-21 (1981); Orellana v. Kyle, 65 F.3d 29, 32 (5th Cir. 1995); Rodgers v. Parole Agent, SCI-Frackville, 916 F. Supp. 474, 477 (E.D. Pa. 1996); Johnson v. Board of Probation and Parole, 532 A.2d 50, 52 (Pa. Cmwlth. 1987). It does not follow, however, that a state official may deny or delay parole in retaliation for the exercise by an inmate of his right of access to the courts. See Milhouse v. Carlson, 652 F.2d 371, 373-74 (3d Cir. 1981); Hill v. Blum, 916 F. Supp. 470, 473 (E.D. Pa. 1996).

Plaintiff does not allege, however, that the parole itself was delayed. He does not state that an acceptable home plan had been submitted or the other requisites had been satisfied. He also does not allege that he had sought access to the courts. He has not contested defendants' assertion, supported by records of this court, that plaintiff's "participation" in a civil action consisted of another inmate's unsuccessful attempt to add plaintiff as a party in that inmate's case which was dismissed by the court on jurisdictional and limitations grounds. See Pension Benefit Guar. Corp. v. White consol. Indus., 998 F.2d 1192, 1996 (3d Cir. 1993) (matters of public record may be considered with motion to dismiss), cert.

denied, 114 S. Ct. 687 (1994).

In any event, plaintiff is precluded from obtaining the equitable and monetary relief he has requested.[2] As plaintiff has been released, his request for injunctive and declaratory relief is moot. See Weinstein v. Bradford, 523 U.S. 147, 148 (1975); Abdul-Akbar v. Watson, 4 F.3d 195, 197 (3d Cir. 1993); Weaver v. Wilcox, 650 F.2d 22, 27 (3d Cir. 1981); Kerr v. Puckett, 967 F. Supp. 354, 363 (E.D. Wisc. 1997). As plaintiff initiated this action while he was a prisoner, he is precluded by statute from obtaining the monetary relief sought for the mental anguish, pain and suffering occasioned by defendants' alleged conduct. See 42 U.S.C. § 1997e(e); Kerr v. Puckett, 138 F.3d 321, 323 (7th Cir. 1998); Davis v. District of Columbia, 158 F.3d 1342, 1349 (D.C. Cir. 1998) ("§ 1997e(e) precludes claims for emotional injury without any prior physical injury regardless of the statutory or constitutional basis of the legal wrong"). That emotional distress or injury produces physical manifestations is not sufficient. Id. The statute precludes punitive as well as compensatory damages. Id. at 1348.[3] See also Warcloud v. Horn,

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[2] Plaintiff has not requested nominal damages and damages predicated on the intrinsic importance of the constitutional rights allegedly violated may not be awarded. See Memphis Community School District v. Stachura, 477 U.S. 299, 309-10 (1986) (involving First and Fourteenth Amendment rights).

[3] See also Zehner v. Trigg, 133 F.3d 459, 462 (7th Cir. 1997) (noting in discussing § 1997(e) that "the constitution does not demand an individually effective remedy for every constitutional violation.").

1998 WL 255578, *2 (E.D. Pa. May 20, 1998) (dismissing First Amendment claim of prisoners insofar as they sought compensatory and punitive damages in absence of physical injury).

ACCORDINGLY, this day of January, 1999, upon consideration of the defendant's Motion to Dismiss (Doc. #10) and in the absence of any response from plaintiff thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the above action is **DISMISSED**.

BY THE COURT:

JAY C. WALDMAN, J.